

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
MARK ROGOWSKI and NANCY ROGOWSKI,

08 Civ. 0517

Plaintiffs,

-against-

JEFFREY FEAGLES, MICHAEL SWEETON,
THOMAS SHUBACK, TSKS, LLC and THE TOWN
OF WARWICK,

**VERIFIED ANSWER
TO FIRST AMENDED
COMPLAINT**

Defendants.
-----X

Defendant named herein as **JEFFREY FEAGLES, MICHAEL SWEETON and THE TOWN OF WARWICK**, by its attorneys, **HODGES, WALSH & SLATER, LLP**, as and for an Answer to plaintiffs' Complaint dated June 19, 2008, allege upon information and belief as follows:

THE PARTIES

FIRST: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraphs "1", "4" and "5" of the Plaintiff's First Amended Complaint.

SECOND: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraphs "2" of the Plaintiff's First Amended Complaint and refers all questions of law to this Court but admits that Jeffrey Feagles ("Feagles") was and is the Commissioner of the Department of Public Works of the Town of Warwick.

THIRD: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraphs "3" of the Plaintiff's First Amended Complaint and

refers all questions of law to this Court but admits Michael Sweeton ("Sweeton") was and is the duly elected Supervisor of the Town of Warwick.

NATURE OF ACTION AND JURISDICTION

FOURTH: Denies each and every allegation contained in paragraphs "7", "8", "9", "10" and "11" of the Plaintiff's First Amended Complaint.

PLAINTIFFS' STATEMENT OF CLAIMS

FIFTH: Denies each and every allegation contained in paragraphs "13", "14", "16", "17", "18", "19", "21", "22", "23", "24", "25", "28" and "29" of the Plaintiff's First Amended Complaint.

SIXTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraphs "15" of the Plaintiff's First Amended Complaint.

SEVENTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraphs "20" of the Plaintiff's First Amended Complaint and refers all questions of law to this Court.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

EIGHTH: The plaintiff's complaint fails to state a cause of action and/or claim upon which relief may be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

NINTH: The plaintiff's claims do not rise to the level of a constitutional violation as against these defendants.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

TENTH: The plaintiff's speech was not a matter of public concern.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

ELEVENTH: The plaintiff does not have a federally protected property interest in the soil, dirt and/or debris at issue.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

TWELFTH: The plaintiff's state claims are barred by their failure to comply with the applicable provisions of the General Municipal Law of the State of New York.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

THIRTEENTH: The defendants Jeffrey Feagles and Michael Sweeton are entitled to qualified immunity.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

FOURTEENTH: The plaintiff's claim for punitive damages is barred by public policy and the laws of the State of New York.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

FIFTEENTH: The defendants acted in good faith and without malice.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

SIXTEENTH: The plaintiff's damages, if any, were caused and/or contributed to by reason of the culpable conduct of the plaintiff.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

SEVENTEENTH: The plaintiff's damages, if any, were caused and created, in whole or in part, by the plaintiff's failure to take steps to mitigate such damages.

**AS AND FOR A COUNTERCLAIM AGAINST PLAINTIFFS MARK AND NANCY
ROGOWSKI, DEFENDANT THE TOWN OF WARWICK DOES HEREBY ALLEGE
THE FOLLOWING:**

EIGHTEENTH: That on and prior to April 16, 2007 plaintiffs were the owners of certain property located at 260 Mt. Eve Road, in the Town of Warwick, New York.

NINETEENTH: That prior to April 16, 2007, plaintiff did improve, or cause to be improved, the aforesaid property, said improvement including the construction of a new driveway leading on to Mt. Eve Road in the Town of Warwick.

TWENTIETH: On April 16, 2007, Mt. Eve Road in the Town of Warwick was a public thoroughfare owned and maintained by the Town of Warwick on behalf of the citizens of the Town.

TWENTY-FIRST: That on April 16, 2007, due to the negligence of the plaintiffs in construction and maintenance of the aforesaid driveway a massive landslide of dirt, rock, trees and other debris was caused to travel downhill from plaintiffs' property onto and across Mt. Eve Road.

TWENTY-SECOND: Said landslide constitutes a trespass onto Town property and occurred without the permission or consent of the Town either express or implied.

TWENTY-THIRD: Said removal required the expenditure of manpower and the use of Town equipment and diverted said manpower and equipment from other projects at a time of flooding throughout the Town.

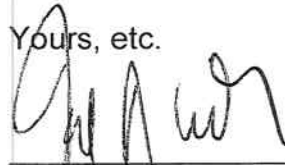
TWENTY-FOURTH: The cost of said removal and subsequent clean up to the Town of Warwick totaled Three Thousand Five Hundred and Thirty-Two Dollars and Sixty-Four Cents (\$3,532.64).

WHEREFORE, Defendants JEFFREY FEAGLES, MICHAEL SWEETON and THE TOWN OF WARWICK demand that Plaintiffs' Complaint be dismissed in its entirety and that defendants be awarded costs, disbursements and fees with interest

and that Defendant TOWN OF WARWICK be awarded Three Thousand Five Hundred and Thirty Two Dollars and Sixty Four Cents (\$3,532.64) together with interest, costs, fees and disbursements.

Dated: White Plains, NY
July 16, 2008

Yours, etc.



John J. Walsh (4092)
HODGES, WALSH & SLATER, LLP
Attorneys for Defendants
JEFFREY FEAGLES
MICHAEL SWEETON
TOWN OF WARWICK
55 Church Street, Suite 211
White Plains, NY 10601
Tel: (914) 385-6000
Fax: (914) 385-6060

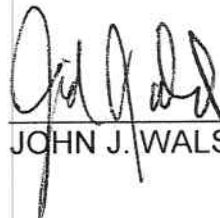
TO: ROBERT N. ISSEKS, ESQ. (RI 0241)
Attorneys for Plaintiffs
6 North Street
Middletown, New York 10940

VERIFICATION

STATE OF NEW YORK)
 SS.:
COUNTY OF WESTCHESTER)

I, THE UNDERSIGNED, AM AN ATTORNEY ADMITTED TO PRACTICE IN THE COURTS OF THE STATE OF NEW YORK, AND SAY THAT: I AM THE ATTORNEY OF RECORD, OR OF COUNSEL WITH THE ATTORNEY OF RECORD, FOR THE DEFENDANTS, JEFFREY FEAGLES, MICHAEL SWEETON and THE TOWN OF WARWICK. I HAVE READ THE ANNEXED **VERIFIED ANSWER TO FIRST AMENDED COMPLAINT**, KNOW THE CONTENTS THEREOF, AND THAT SAME ARE TRUE TO MY OWN KNOWLEDGE, EXCEPT THOSE MATTERS THEREIN WHICH ARE STATED TO BE ALLEGED UPON INFORMATION AND BELIEF, AND AS TO THOSE MATTERS THEREIN NOT STATED UPON KNOWLEDGE, IS BASED UPON THE FOLLOWING: MATERIAL IN THE FILE, INFORMATION AND DOCUMENTS CONTAINED IN SAID FILE.

Dated: White Plains, New York
July 16, 2008



JOHN J. WALSH